



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

November 18, 2004

Ms. Lillian Guillen Graham
Assistant City Attorney
City of Mesquite
P.O. Box 850137
Mesquite, Texas 75185-0137

OR2004-9823

Dear Ms. Graham:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 213093.

The Mesquite Police Department (the "department") received a request for information related to false alarms in the City of Mesquite over a one year period. You claim that some of the requested information is excepted from disclosure under sections 552.101 and 552.130 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by section 1702.284 of the Occupations Code, which provides:

Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the commission or as otherwise required by state law or court order.

Occ. Code § 1702.284. The submitted information consists of a list of police calls for service. The list contains names of individuals and businesses that are confidential under section 1702.284 to the extent that the individuals and businesses are occupants of an alarm

system location. Furthermore, because section 1702.284 provides that information "that concerns the location of an alarm system" is protected from disclosure, to the extent the telephone numbers and addresses in the list correspond to the location of an alarm system, the telephone numbers and addresses are confidential under section 1702.284. Other information concerning the location of an alarm system, such as a building or apartment number is also confidential. Finally, the types of alarm system used are confidential under section 1702.284. We have marked the types of information that are confidential under section 1702.284 and must be withheld under section 552.101.

Section 552.101 also encompasses criminal history record information ("CHRI") generated by the National Crime Information Center ("NCIC") or the Texas Crime Information Center ("TCIC"). Federal regulations prohibit the release to the general public of CHRI that is maintained in state and local CHRI systems. *See* 28 C.F.R. § 20.21(c)(1) ("Use of criminal history record information disseminated to noncriminal justice agencies shall be limited to the purpose for which it was given") and (c)(2) ("No agency or individual shall confirm the existence or nonexistence of criminal history record information to any person or agency that would not be eligible to receive the information itself"); *see also* Open Records Decision No. 565 at 10-12 (1990). CHRI is defined under section 411.082 of the Government Code as

(2) information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations, and other formal criminal charges and their dispositions.

Gov't Code § 411.082(2). The definition of CHRI does not include driving record information maintained by the Texas Department of Public Safety under chapter 521 of the Transportation Code. *See* Gov't Code § 411.082(2)(B). After carefully reviewing your representations and the submitted information, we find that no portion of the information constitutes CHRI as defined by section 411.082(2). Accordingly, we conclude that the department may not withhold any portion of the submitted information under section 552.101 in conjunction with state or federal law governing CHRI.

You also claim that portions of the submitted information are protected under the doctrine of common-law privacy as encompassed by section 552.101. Common-law privacy protects information that (1) contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). The type of information considered intimate and embarrassing by the Texas Supreme Court in *Industrial Foundation* included information relating to sexual assault, pregnancy, mental or physical abuse in the workplace, illegitimate children, psychiatric treatment of mental disorders, attempted suicide, and injuries to sexual organs. 540 S.W.2d at 683. In addition, this office has found that the following types of information are excepted from required

public disclosure under common-law privacy: an individual's criminal history when compiled by a governmental body, *see* Open Records Decision No. 565 (citing *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989)); personal financial information not relating to a financial transaction between an individual and a governmental body, *see* Open Records Decision Nos. 600 (1992), 545 (1990); and some kinds of medical information or information indicating disabilities or specific illnesses, *see* Open Records Decision Nos. 470 (1987) (illness from severe emotional and job-related stress), 455 (1987) (prescription drugs, illnesses, operations, and physical handicaps). We find that the personal financial information you have highlighted in yellow must be withheld under section 552.101 in conjunction with the doctrine of common-law privacy.

We note that the submitted information contains a social security number that may be withheld in some circumstances under section 552.101 of the Government Code. A social security number or "related record" may be excepted from disclosure under section 552.101 in conjunction with the 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I). *See* Open Records Decision No. 622 (1994). These amendments make confidential social security numbers and related records that are obtained and maintained by a state agency or political subdivision of the state pursuant to any provision of law enacted on or after October 1, 1990. *See id.* We have no basis for concluding that the social security number in the submitted information is confidential under section 405(c)(2)(C)(viii)(I), and therefore excepted from public disclosure under section 552.101 on the basis of that federal provision. We caution, however, that section 552.352 of the Public Information Act imposes criminal penalties for the release of confidential information. Prior to releasing the social security number information, you should ensure that no such information was obtained or is maintained by the department pursuant to any provision of law, enacted on or after October 1, 1990.

Finally, you note that the submitted information includes Texas driver's license and motor vehicle information. Section 552.130 provides in relevant part:

(a) Information is excepted from the requirement of Section 552.021 if the information relates to:

- (1) a motor vehicle operator's or driver's license or permit issued by an agency of this state; [or]
- (2) a motor vehicle title or registration issued by an agency of this state[.]

Gov't Code § 552.130(a). You must, therefore, withhold the Texas driver's license numbers, vehicle identification numbers, license plate numbers, and title and registration information you have marked under section 552.130. You must also withhold the additional information

we have marked under section 552.130. We note that driver's license and license plate numbers issued by other states are not protected under section 552.130.

In summary, the department must withhold: 1) the types of information concerning alarm systems that we have marked pursuant to section 552.101 in conjunction with section 1702.284; 2) personal financial information pursuant to section 552.101 in conjunction with common-law privacy; and 3) Texas driver's license information pursuant to section 552.130. The social security number may be excepted from public disclosure under section 552.101 in conjunction with federal law. The remaining information must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script that reads "L. Joseph James".

L. Joseph James
Assistant Attorney General
Open Records Division

LJJ/seg

Ref: ID# 213093

Enc. Submitted documents

c: Ms. Sarah Williams
1250 East Copeland, Suite 550
Arlington, Texas 76011
(w/o enclosures)